

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

<b>JOEY'S AUTO REPAIR &amp; BODY SHOP and ON-PAR TURF,</b>	) CIVIL ACTION NO. 18-87
	)
	)
Plaintiffs,	)
	)
	)
	)
v.	)
	)
	)
<b>FAYETTE COUNTY, ANGELA M. ZIMMERLINK, TERRY and DIANE KRISS,</b>	)
	)
	)
	)
Defendants.	)

**MEMORANDUM ORDER**

Now pending is plaintiffs' motion for leave to file an amended complaint. (ECF No. 29). Plaintiffs explain that the amended complaint responds to "legitimate issues" raised in various motions to dismiss. All defendants filed motions to dismiss the original complaint in this case. (ECF Nos. 6, 21, 25). Plaintiffs' proposed amended complaint is attached to the motion. (ECF No. 29-1). The motion will be decided without a response from defendants.

Pursuant to Federal Rule of Civil Procedure 15(a)(1), a plaintiff may amend its complaint once as a matter of course, but only (A) within 21 days after serving it; or (B) within 21 days of a responsive pleading or Rule 12(b), (e) or (f) motion to dismiss, whichever is earlier. In all other situations, a party may amend its pleading only with the written consent of the opposing parties or leave of court. Fed. R. Civ. P. 15(a)(2). The court should "freely give leave when justice so requires." When a complaint is subject to dismissal under Rule 12(b)(6), district courts should generally permit an opportunity to amend unless an amendment would be inequitable, or

otherwise unjust by way of futility, bad faith, or undue delay. *Arthur v. Maersk, Inc.*, 434 F.3d 196, 204 (3d Cir. 2006).

Plaintiffs filed the motion to amend their complaint within 21 days of the Rule 12 motion filed by Angela Zimmerlink. They may amend as a matter of right, therefore, pursuant to Rule 15(a)(1). The court need not consider leave to amend pursuant to Rule 15(a)(2).

An amended complaint “supersedes the original and renders it of no legal effect.” *West Run Student Hous. Assocs., LLC v. Huntington Natl. Bank*, 712 F.3d 165, 171 (3d Cir. 2013). Defendants’ motions to dismiss the original complaint are now moot. The motions will be denied without prejudice to defendants’ ability to seek dismissal of the amended complaint to the extent that the flaws in plaintiffs’ claims were not cured.

### Conclusion

Plaintiffs’ motion for leave to file an amended complaint (ECF No. 29) is GRANTED. They shall file the amended complaint FORTHWITH. Defendants’ motions to dismiss the original complaint (ECF Nos. 6, 21, 25) are DENIED AS MOOT without prejudice.

SO ORDERED this 1<sup>st</sup> day of May, 2018.

By the Court:

/s/ JOY FLOWERS CONTI  
Joy Flowers Conti  
Chief United States District Judge